



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

CN# 18-10
USDA SP 01-2010

MEMORANDUM

To: School Health & Nutrition Program Sponsors

From: Tina Herzog, Acting Deputy Associate Superintendent
Arizona Department of Education, Health & Nutrition Unit

Nicholas Dunford, Financial Services Director
Arizona Department of Education, Health & Nutrition Unit

Date: November 1, 2009

RE: Applying Geographic Preferences in Procurements for the Child Nutrition Program Updates

Original Signed

This memorandum updates and revises Memoranda *Procurement Regulations*, CN# 13-09 and CN# 02-10, regarding School Food Authorities' (SFA) and other institutions' application of a geographic preference in procurements for the Child Nutrition Programs (CNP). Section 4302 of the Food, Conservation, and Energy Act of 2008, P.L. 110-246 (Farm Bill), amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1758(j), directing the Secretary of Agriculture to encourage institutions operating the CNPs to purchase unprocessed locally grown and locally raised agricultural products. In addition, the Farm Bill allows SFAs and other institutions receiving funds through the CNP to apply a geographic preference when procuring those unprocessed agricultural products.

As provided in the Joint Explanatory Statement of the Committee of Conference, the Managers used the term "unprocessed" to preclude the use of geographic preference for agricultural products that have significant value added components. The Managers do not intend to preclude *de minimis* handling and preparation such as might be necessary to present an agricultural product to a SFA in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton. (H.Rpt. 100-627)

In the above-referenced memorandum and question and answer communications, the United States Department of Agriculture (USDA) provided initial guidance on the term “unprocessed” as it relates to the use of geographic preferences in procurements by SFAs and other service institutions, stating the *de minimis* handling and preparation anticipated by the Managers would not include chopped, cut, or diced products. As a result, the USDA concluded that “geographic preference may not be applied to agricultural products that have been chopped, cut, sliced, or diced.”

However, after observing the impact of the interpretation of unprocessed during the past year the USDA determined that the initial guidance is unnecessarily restrictive and potentially prevents SFAs and service institutions from procuring unprocessed, locally grown products in a usable form. Accordingly, the USDA is updating their initial guidance. Unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the parameters of unprocessed as used in the Farm Bill. Therefore, SFAs and other service institutions may use a geographic preference when procuring those agricultural products. The relevant memorandum and question and answer communications will be revised accordingly and re-issued.

It is important to note that the Farm Bill does not permit the use of geographic preferences in SFAs and other service institutions’ procurement of agricultural products that have significant value added components. The USDA will issue a proposed regulation early in Fiscal Year 2010 on the geographic preference provision.

If you have any questions or concerns regarding this memo, please contact the Health and Nutrition Contracts Management Officer, Ellen Pimental at (602) 542-6208 or email at Ellen.pimental@azed.gov.